

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

GOLDEN BETHUNE-HILL, *et al.*,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

Civil Action No. 3:14-cv-00852-REP-AWA-BMK

**DEFENDANT-INTERVENORS' REPLY TO
PLAINTIFFS' MEMORANDUM REGARDING DEPOSITION DESIGNATIONS**

Shortly after the Final Pretrial Conference on September 29, 2017, Defendant-Intervenors provided Plaintiffs with the full record¹ on the issue of whether the 2015 designations made by the parties were part of the record on remand in order to narrow the parties' differences and avoid bringing this dispute, yet again, to the Court. Needless to say, Defendant-Intervenors are surprised to be in this position after working in good faith through the weekend to come to resolution. Despite Plaintiffs' contentions, unfortunately, the parties' pending disputes regarding discovery designations are not resolved and are further complicated by Plaintiffs' filing last night. Here is what remains for the Court's resolution:

1. The extent to which the 2015 designations are "part of the record on remand." Plaintiffs assume as much in their brief but the record is not clear: the 2015 designations were **not** admitted as an exhibit, or even proposed as an exhibit, or read into the trial transcript in the 2015 trial. The universe of the "record on remand" was defined by this Court as being: "the trial

¹ Including the text quoted in Plaintiffs' Br. n.1 (quoting text from the 2015 trial).

transcript and exhibits from July 2015 will be part of the record on remand.” Order at 2 (Dkt. 160 June 2, 2017). The parties’ own actions reflect an understanding that the 2015 designations were **not** part of the record on remand. *See*, e-mail from Plaintiffs’ counsel at Exhibit A (designating material already designated in 2015). If Plaintiffs had believed that the 2015 designations were part of the record on remand, there was no need to designate them again.

2. If the Court favors inclusion of the 2015 designations as “part of the record on remand,” an issue remains as to how it resolves the 2015 designations of Mr. Marston’s testimony considering Plaintiffs’ explicit concession that the Marston deposition testimony is “impermissible hearsay.” Br. 1-2 (Plaintiffs “concede the point and agree that all the Marston designations that were subject of this dispute should be excluded.”). The record supports a finding that Mr. Marston’s deposition testimony should be excluded from the record on remand.

3. If the Court favors inclusion of the 2015 designations as “part of the record on remand,” how it resolves Plaintiffs’ withdrawal of “designations of the deposition of Delegate Roslyn C. Tyler to which Intervenor have objected.” Br. 2. The record supports a finding that Delegate Tyler’s testimony to which Intervenor have objected should be excluded from the record on remand.

4. Defendant-Intervenor’s counter-designations to any material deemed part of the record on remand stand and, should the Court deem the 2015 designations from Mr. Marston’s transcript as part of the record on remand, the Court must still resolve the issue of Plaintiffs’ objection to Defendant-Intervenor’s counter-designations on pages 47:16 to 48:15 of his transcript (namely, the objection that attorney-client privilege was waived).

The Parties must file by Thursday, October 5, 2017, a set of all conformed designations for the Court. Defendant-Intervenor will continue to try to work with Plaintiffs on resolving

these outstanding disputes through stipulation.

Dated: October 3, 2017

Respectfully submitted,

VIRGINIA HOUSE OF DELEGATES
AND VIRGINIA HOUSE OF DELEGATES
SPEAKER WILLIAM J. HOWELL

By Counsel

/s/ Katherine L. McKnight

Katherine L. McKnight (VSB No. 81482)

E. Mark Braden (*pro hac vice*)

Richard B. Raile (VSB No. 84340)

BAKER HOSTETLER LLP

1050 Connecticut Avenue, NW Suite 1100

Washington, DC 20036

Telephone: 202.861.1500

Facsimile: 202.861.1783

kmcknight@bakerlaw.com

mbraden@bakerlaw.com

rraile@bakerlaw.com

Dalton L. Oldham, Esq. (*pro hac vice*)

1119 Susan St.

Columbia, SC 29210

Telephone: 803-772-7729

dloesq@aol.com

*Attorneys for the Virginia House of Delegates and
Virginia House of Delegates Speaker William J. Howell*

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2017, the foregoing Defendant-Intervenors' Reply To Plaintiffs' Memorandum Regarding Deposition Designations was filed and served on all counsel of record pursuant to the Court's electronic filing procedures using the Court's CM/ECF system.

/s/ Katherine L. McKnight

Katherine L. McKnight (VSB No. 81482)

E. Mark Braden (*pro hac vice*)

Richard B. Raile (VSB No. 84340)

BAKER HOSTETLER LLP

1050 Connecticut Avenue, NW Suite 1100

Washington, DC 20036

Telephone: 202.861.1500

Facsimile: 202.861.1783

kmcknight@bakerlaw.com

mbraden@bakerlaw.com

rraile@bakerlaw.com

*Attorneys for the Virginia House of Delegates and
Virginia House of Delegates Speaker William J. Howell*